

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Provision of Directory Listing Information)	CC Docket No. 99-273
Under the Communications Act of 1934,)	
As Amended)	
)	
The Use of N11 Codes and Other Abbreviated)	CC Docket No. 92-105
Dialing Arrangements)	
)	
Administration of the North American)	CC Docket No. <u>92-237</u> /
Numbering Plan)	

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DATED: April 1, 2002

SUMMARY

Premiere Network Services, Inc. (“Premiere”) submits these comments to support Metro One’s assertion that most incumbent local exchange carriers (“ILECs”) will not activate 555 numbers assigned to competitive carriers, and to urge the Commission to reaffirm that the Telecommunications Act of 1996 (the “1996 Act”), the Commission’s rules, and industry guidelines require ILECs to update the translation tables, certain switches, and other elements in their network as necessary to ensure that calls to 555 numbers assigned to competitive carriers are recognized and routed correctly.

Premiere’s experiences with Southwestern Bell Telephone Company (“SWBT”) are consistent with Metro One’s assertion that most ILECs will not activate 555 numbers assigned to competitive carriers. For over two years, Premiere has been unsuccessfully attempting to persuade SWBT to update the translation tables, certain switches and other elements in its network so that calls to Premiere’s 555 numbers are recognized and routed correctly. SWBT admits that it could properly route calls dialed on a ten-digit basis to 555 numbers assigned to Premiere. However, SWBT refuses to open the 555 NXX code unless Premiere agrees to pay SWBT millions of dollars. In the meantime, SWBT continues to use its 555 number to provide directory assistance services while blocking all calls to 555 numbers assigned to competitive carriers, including Premiere.

The 1996 Act seeks to prevent exactly this type of discriminatory and anti-competitive behavior, because Congress recognized that “ensuring fair and impartial access to numbering resources is a critical component of encouraging a robustly competitive

telecommunications market in the United States.”¹ Even before Congress passed the 1996 Act, the Commission repeatedly recognized that “access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network.”²

The abuse by SWBT of its *de facto* control over certain numbering resources to deny access to those numbering resources by the competitive carrier to whom they are legally assigned constitutes violations of Sections 201(b), 202(a), 251(b)(3), 251(c)(1), 251(c)(3) and 251(e)(1) of the 1996 Act, as well as the Commission’s policies and rules thereunder. As a direct consequence of SWBT’s anti-competitive and discriminatory actions, Premiere is unable to provide innovative services within SWBT’s in-region states or utilize the UNEs that Premiere requested from SWBT to provide these services. Therefore, Premiere urges the Commission to reaffirm that ILECs have a duty to update the translation tables, certain switches and other elements in their networks so that calls to 555 numbers are recognized and routed correctly, and that an ILEC can charge competing carriers for doing so only if it charges one uniform fee for all carriers, including itself and its affiliates. Unless the Commission acts swiftly and forcefully, the ILECs will continue to wage a war of attrition by flaunting the 1996 Act’s requirements, the Commission’s rules and policies, and industry guidelines.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, 19508, ¶261 (1996) (“Local Competition Second Report and Order”).

² *Id.*, citing *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588, 2591 (1995).

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COMMENTS OF PREMIERE NETWORK SERVICES, INC.

Premiere Network Services, Inc. ("Premiere"), by its attorneys, respectfully submits these comments on the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* released on January 9, 2002 in the above-captioned proceeding.³ Specifically, Premiere submits these comments to support Metro One's assertion that most incumbent local exchange carriers ("ILECs") will not activate 555 numbers assigned to competitive carriers,⁴ and to urge the Commission to reaffirm that the Telecommunications Act of 1996 (the "1996 Act"), the Commission's rules, and industry guidelines require the ILECs to update the translation tables, certain switches, and other elements in its network as necessary to ensure that calls to 555 numbers assigned to competitive carriers

³ *Provision of Directory Listing Information Under the Communications Act of 1934 in CC Docket No. 99-273, The Use of N11 Codes and other Abbreviated Dialing Arrangements in CC Docket No. 92-105, Administration of the North American Numbering Plan in CC Docket No. 92-237, Notice of Proposed Rulemaking, FCC 01-384 (rel. Jan. 9, 2002) (Notice).*

⁴ *Id.* ¶ 48; see also Metro One Comments at 6.

are recognized and routed correctly. Premiere takes no position at this time on the other issues raised in the *Notice*.

Premiere is a competitive provider of local exchange, exchange access, interexchange and information services. Premiere is the 555 Number Holder⁵ for 555-0422, 555-0522, 555-8880 and 555-9934, all of which are national numbers, as well as 555-0811, which is a non-national number. Premiere Affiliates, Inc., an affiliate of Premiere, is the 555 Number Holder for 555-0065, 555-0362, 555-0638, and 555-4792, all of which are national numbers. Like SWBT, Premiere uses, or is attempting to use, 555 numbers to provide telecommunications and information services as permitted by the INC 555 Guidelines.⁶

Premiere's experiences with Southwestern Bell Telephone Company ("SWBT") are consistent with Metro One's assertion most ILECs will not activate 555 numbers assigned to competitive carriers.⁷ SWBT has *de facto* control over all of the line numbers within the 555 Central Office Code ("NXX Code") as a direct legacy of its former role as the monopoly provider of telecommunications services within its in-region states.⁸ Unless SWBT "opens" the 555 NXX code by updating the translation tables, certain switches and other elements in its network so that calls to 555 numbers are recognized and routed correctly, SWBT customers cannot call the 555 numbers of SWBT's competitors, including Premiere, without using the dial around Carrier Access Code ("CAC") of an interexchange carrier and one plus ten-digit dialing (*e.g.*, 10 10 XXX 1 (NPA) 555-XXXX). Therefore, if SWBT refuses to open the 555 NXX

⁵ See, 555 NXX Assignment Guidelines, INC 94-0429-002 § 11.0 (A 555 Number Holder is the entity to whom a 555 number has been assigned) (hereinafter referred to as INC 555 Guidelines).

⁶ See generally, INC 555 Guidelines.

⁷ Notice ¶ 48; see also Metro One Comments at 6.

⁸ See generally, INC 555 Guidelines.

code, the 555 numbers that have been legally assigned by the North American Numbering Plan Administration (“NANPA”) to competitive carriers like Premiere are, for all practical purposes, useless.

Until December 4, 2001, SWBT routed all calls to 555 numbers, including those assigned to competitive carriers like Premiere, to SWBT’s own 555 number (*i.e.*, 555-1212), and charged the caller for receiving SWBT’s directory assistance (“DA”) service. On December 4, 2001, SWBT began routing all calls to 555 numbers assigned to competitive carriers like Premiere to a recording which politely explains that the call “cannot be completed as dialed.” The only way that a SWBT customer can complete a call to a 555 number assigned to a competitive carrier like Premiere is to dial ***18 digits***, which contrasts starkly with the number of digits that the same customer can dial to call a 555 number assigned to SWBT: ***ten digits***.

For over two years, Premiere has been unsuccessfully attempting to convince SWBT to update the translation tables, certain switches and other elements in its network so that calls to Premiere’s 555 numbers are recognized and routed correctly.⁹ SWBT admits that it could properly route calls dialed on a ten-digit basis to 555 numbers assigned to Premiere. However, SWBT refuses to open the 555 NXX code unless Premiere agrees to pay SWBT millions of dollars. Specifically, on April 27, 2001, SWBT provided Premiere with a written proposal to “develop,” but not provide, a service to ensure that calls to Premiere’s 555 numbers are routed correctly. Under this proposal, Premiere would have had to pay SWBT Three Million Six Hundred Twenty-Four Thousand Dollars (\$3,624,000.00) simply for SWBT to “develop a product description and technical service description (“Product Description”) of the 555 Service

⁹ Premiere has notified SWBT that it intends to file a formal complaint against SWBT pursuant to Section 208 of the Act, 47 U.S.C. § 208, and expects to do so in the near future.

for the state of Texas only.” The proposal contained no deadline for completion of the Product Description, or even a guarantee that a Product Description would ever be produced. Further, the proposal required payment in full even if the resulting “Product Description” described a service that was available only in one SWBT Central Office. Notably, the proposal did not require SWBT to share the costs of development for the Product Description, despite the fact that SWBT would continue to use its own 555 number.

In response to SWBT’s written proposal, Premiere submitted a counter-offer in which Premiere offered to pay SWBT One Million Sixty Thousand Dollars (\$1,060,000.00) to develop a “Product Description.” SWBT summarily rejected Premiere’s offer. Negotiations since then, including negotiations mediated by the Commission, have failed. In the meantime, SWBT continues to charge itself nothing to access its 555 number while it blocks access to the 555 numbers of its competitors, including Premiere.

I. THE FCC MUST ENSURE THAT 555 NUMBERS ARE MADE AVAILABLE PROMPTLY AND ON A NONDISCRIMINATORY BASIS.

In theory, the Commission should not have to clarify the obligations of ILECs to update the translation tables, certain switches and other elements in their network so that calls to 555 numbers are recognized and routed correctly, and to treat other carriers as the ILECs would treat themselves, because the existing law on these issues is clear. In reality, however, the Commission must reaffirm that ILECs have a duty to update the translation tables, certain switches and other elements in their network so that calls to 555 numbers are recognized and routed correctly, and that a LEC can charge competing carriers for doing so only if the LEC charges one uniform fee for all carriers, including itself and its affiliates, because certain ILECs, including SWBT, routinely ignore their legal obligations. Unless the Commission acts swiftly

and forcefully, the ILECs will continue to wage a war of attrition by flaunting the 1996 Act's requirements, the Commission's rules and policies, and industry guidelines.

The activities that LECs must perform so that calls to 555 numbers are recognized and routed correctly, including those for which SWBT has demanded a multi-million dollar fee from Premiere, fall squarely within the Commission's definition of "code opening," which is "the updating of translation tables, certain switches, and other network elements by each entity interconnecting with the public switched telephone network (PSTN) to allow that entity to route telephone calls and process rate information within its own network."¹⁰ During mediations before the Commission, SWBT claimed that the definition of "code opening" did not apply here, because Premiere had not asked SWBT to open the entire 555 NXX codes, which is shared by multiple carriers, but rather only a few 555 line numbers. However, the Commission has explicitly rejected this argument in past proceedings, explaining that the "code opening" requirements apply equally whether the LEC has been asked to open an entire NXX code or merely a partial NXX code.¹¹ Therefore, the fact that a competitive carrier asks an ILEC to open a partial NXX code – specifically, the 555 line numbers that NANPA assigned to the competitive carrier – rather than a full 555 NXX code provides no basis for the LEC to defy the code opening requirements imposed by the Act, the Commission's rules and policies, and industry guidelines.¹²

¹⁰ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 17964, 18017, ¶ 81 (1999) ("10-Digit Dialing Order").

¹¹ *Id.* at 18017, n.322 (explaining that NXXs can be shared between two or more carriers and emphasizing that the requirements with respect to opening codes are the same whether the requesting carrier needs "partial or full NXXs").

¹² For the sake of simplicity and consistency with Commission precedent, Premiere uses the term "code opening" in these comments. However, LECs are subject to the same requirements under the Act, the Commission's rules and policies, and the Industry
(continued...)

The Commission has repeatedly emphasized that “charging different fees to different providers or categories of providers of telephone exchange service for code assignment, code activation, or code opening violates the Act’s section 251(b)(3) nondiscrimination requirement and the 1996 Act’s section 202(a) prohibition against unreasonable discrimination.”¹³ Charging different fees for functions associated with NXXs, including the assignment of telephone numbers, also constitutes an “unjust practice” and “unjust charge” under Section 201(b) of the 1996 Act,¹⁴ and is “inconsistent with the principle stated in section 251(e)(1) that numbers are to be available on an equitable basis.”¹⁵ “The Act’s prohibitions against those practices by LECs extends to all telecommunications common carriers . . . because all telecommunications common carriers are to be treated equitably, and on a competitively neutral basis. This protection also applies to all fees and functions associated with NXXs,

(...continued)

guidelines whether the activities at issue are deemed “code opening” or “number opening.”

¹³ *10-Digit Dialing Order* at 18017, ¶82. *See also id.* at 18011, ¶72 (same). *See also id.* at 18018-19, ¶85 (“Pursuant to section 201(b) and 202 of the Act, we explicitly extend this protection to all telecommunications common carriers, including paging carriers.”). The term “code activation” means “the entry of code assignment information in the BRIDS, the RDBS, and other databases; the maintenance of code assignment information in these databases, and the publication of routing and routing information in output databases including the LERG and the Terminating Point Master (TPM) for distribution to telecommunications service providers.” *Id.* at 18016-17, ¶81. The term “code opening” means “the updating of translation tables, certain switches, and other network elements by each entity interconnecting with the public switched telephone network (PSTN) to allow that entity to route telephone calls and process rate information within its own network.” *Id.* at 18017, ¶81.

¹⁴ *Id.* at 18011, ¶72 (1999) (concluding that “charging different ‘code opening’ fees constitutes an “unjust practice” and “unjust charge” under section 201(b)”).

¹⁵ *Id.*

including the assignment of telephone numbers.”¹⁶ In short, “incumbent LECs must treat other carriers as the incumbent LECs would treat themselves.”¹⁷

In light of these requirements, the Commission has found that “any LEC charging competing carriers fees for code assignment, code activation, or code opening can do so only if the LEC charges one uniform fee for all carriers, including itself and its affiliates. Such fees must be just and reasonable as required by sections 201(b) and 251(e) of the Act.”¹⁸ The Commission has also emphasized that when more than one carrier “shares” the same NXX, the “charges for partial or full NXXs . . . must be reasonable and must be assessed in a nondiscriminatory manner.”¹⁹

Indeed, with respect to “code opening,” the Commission has concluded that the LECs may not charge a fee at all “because the code opening process involves reciprocal obligations among carriers pursuant to section 251(a) of the Act,”²⁰ and the “expenses associated with code opening are a cost of doing business that mutually benefits all entities utilizing the PSTN and are essential to the ongoing ‘interconnectiveness’ of the telecommunications

¹⁶ *Id.* at 18017, ¶82. *See also id.* at 18011, ¶72 (same). *See also id.* at 18018-19, ¶85 (“Pursuant to section 201(b) and 202 of the Act, we explicitly extend this protection to all telecommunications common carriers, including paging carriers.”).

¹⁷ *Id.* at 18011, ¶72 (extending the prohibition against LECs charging discriminatory fees for numbering to cover charges to all telecommunications carriers).

¹⁸ *Id.* at 18017, ¶82. *See*, 47 C.F.R. §51.27(a)(1) (defining the term “competing provider” as “a provider of telephone exchange or telephone toll services that seeks nondiscriminatory access from a local exchange carrier (LEC) in that LEC’s service area.”).

¹⁹ *Id.* at 18017, n.322 (explaining that NXXs can be shared between two or more carriers and emphasizing that the requirements imposed by the Act, as well as the Commission’s rules implementing the Act, are the same whether the requesting carrier needs “partial or full NXXs”). *See also id.* (“NXXs can be comprised of Type 1 or Type 2 numbers. NXXs that are comprised of Type 1 numbers may contain wireless and wireline numbers and thus implicate issues involving, for example, sharing of NXXs by two or more carriers. We emphasize here that charges for partial or full NXXs with Type 1 numbers must be reasonable and must be assessed in a nondiscriminatory manner.”).

network.”²¹ Notwithstanding the Commission’s rulings on these issues, certain ILECs continue to flaunt their statutory obligations. Therefore, Premiere urges the Commission to reaffirm the following obligations of carriers with respect to 555 numbers.

A. Section 251(b)(3) of the Act and Sections 52.207 & 52.217 of the Commission’s Rules Require ILECs To Open the 555 NXX Code to Competitive Carriers.

Section 251(b)(3) of the 1996 Act requires the ILEC, as a local exchange carrier, “to provide dialing parity to competing providers of telephone exchange service and telephone toll service”²² and “to permit all such providers to have nondiscriminatory access to telephone numbers.”²³ Therefore, competing providers of telephone exchange service and telephone toll service, including Premiere,²⁴ are entitled to receive from the ILEC nondiscriminatory access to telephone numbers and dialing parity pursuant to Section 251(b)(3).

(...continued)

²⁰ *Id.* at 18018-19, ¶85.

²¹ *Id.*

²² 47 U.S.C. §251(b)(3).

²³ *Id.*

²⁴ In addition to providing telephone exchange and telephone toll services directly, Premiere provides, or will provide, “call completion” information services using its 555 numbers. The Commission has concluded that where an information service provider, such as a DA provider, completes the call, and does not merely hand off the call to another entity to complete the call and charge the customer, this service comes within the meaning of section 251(b)(3). *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736, 2744, ¶14 (2001). In other words, the provision of “call completion” makes an entity a provider of telephone exchange service within the meaning of the 1996 Act, and, as such, entitles them to receive nondiscriminatory access to telephone numbers and dialing parity pursuant to section 251(b)(3). *Id.* at 2744, ¶14, and 2745-47, ¶17, ¶20, ¶25 (concluding that call completion falls within the definition of “telephone exchange service” in section 3(47)(A) and 3(47)(B), as well as the definition of “toll service” in section 3(48)).

1. Nondiscriminatory Access to Telephone Numbers

Section 251(b)(3) of the 1996 Act requires LECs to provide “nondiscriminatory access to telephone numbers.”²⁵ The Commission has repeatedly concluded that “the term ‘nondiscriminatory access’ as used in section 251(b)(3) of the Act means that a LEC that provides telephone numbers . . . must permit competing providers to have access to those services that: (a) does not discriminate between or among requesting carriers in rates, terms, and conditions of access; and (b) is equal to the access that the providing LEC gives itself. The Commission reasoned that any standard that would allow a LEC to offer access inferior to that enjoyed by that LEC itself would be inconsistent with Congress’ intention of establishing competitive, deregulated markets for all telecommunications services.”²⁶ Accordingly, “a LEC providing telephone numbers must permit competing providers to have access to those numbers that is *identical* to the access that the LEC provides to itself.”²⁷

The Commission codified these findings in Section 51.217(a)(2), which provides in relevant part that “‘nondiscriminatory access’ refers to access to telephone numbers . . . that is

²⁵ 47 U.S.C. § 251(b)(3).

²⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 15550, 15616, ¶125 (1999) (“Local Competition Third Report and Order”). The Commission has concluded that the 1996 Act imposed a more stringent nondiscrimination standard than that which applied under the 1934 Act. *Id.* at 15618, ¶129 (explaining that “[b]ecause an incumbent LEC would have the incentive to discriminate against competitors by providing them with less favorable terms and conditions than it provides to itself, we concluded that ‘the term ‘nondiscriminatory,’ as used throughout section 251, applies to the terms and conditions an incumbent LEC imposes on third parties as well as on itself”).

²⁷ *10-Digit Dialing Order* at 18017-18, ¶83. The Commission has rejected the argument that section 251(b)(3) requires access that is merely nondiscriminatory among requesting carriers, ruling that “section 251(b)(3)’s ‘nondiscriminatory access’ requirement mandates a standard that such access be equal to that provided by the LEC to itself. . . . [A]ny standard that would allow a LEC to provide access to any competitor that is inferior to that enjoyed by the LEC itself is inconsistent with Congress’ objective of establishing competition in all telecommunications markets.” *Id.* at 15618, ¶128, *quoting Local Competition Second Report and Order* at 19444-46, ¶¶100-106.

at least equal to the access that the providing local exchange carrier (LEC) itself receives,”²⁸ and in Section 51.217(c)(1), which provides in relevant part that a “LEC shall permit competing providers to have access to telephone numbers that is identical to the access that the LEC provides to itself.”²⁹

The Commission has rejected arguments that LECs do not provide themselves with “access” to telephone numbers, but rather provide these items as part of an overall service package.³⁰ In the words of the Commission, “this argument is beside the point. LECs also provide loops as an integral part of their local exchange service offerings, but nevertheless were required to provide loops to competitors in a manner equal to the provision of loops to themselves. In order to provide telephone numbers . . . to end users, LECs must first provide those services to themselves.”³¹

The Commission has further concluded that, because “carriers do not own NXX codes or numbers, but rather administer the distribution of these numbers for the efficient operation of the PSTN,”³² competing carriers “are entitled to reasonable accommodation of their numbering requirements” by LECs,³³ but that these LECs “could impose a *reasonable* initial connection charge . . . as compensation for costs of software updates and other changes

²⁸ 47 C.F.R. §51.217(a)(2).

²⁹ 47 C.F.R. §52.217(c)(1). *See also* 47 C.F.R. §52.217(b) (providing in relevant part that a “local exchange carrier (LEC) that provides . . . telephone numbers, shall permit competing providers of telephone exchange service or telephone toll service to have nondiscriminatory access to that service or feature, with no unreasonable dialing delays.”).

³⁰ *Local Competition Third Report and Order* at 15618, ¶130.

³¹ *Id.* at 15618-19, ¶130.

³² *10-Digit Dialing Order* at 18017-18, ¶83.

³³ *Id.*

associated with the provision of new numbers.”³⁴ However, “charging different code opening fees for different providers or categories of providers of telephone exchange service constitutes discriminatory access to telephone numbers, and thus violates section 251(b)(3) of the Act, . . . [and] constitutes unjust and unreasonable discrimination in charges assessed for the opening of partial or full NXXs”³⁵ Premiere urges the Commission to reaffirm these findings with respect to 555 numbers.

2. Dialing Parity

Section 251(b)(3) of the 1996 Act requires LECs “to provide dialing parity to competing providers of telephone exchange service and telephone toll service”³⁶ with respect to all telecommunications services that require dialing to route a call.³⁷ Pursuant to Section 251(b)(3), the Commission requires LECs “to permit telephone exchange service customers, within a defined local calling area, to dial the same number of digits to make a local telephone call, *notwithstanding the identity of the customer’s or the called party’s local telephone service provider.*”³⁸ The Commission has codified this requirement in Section 51.207 of its rules, which provides in relevant part that a “LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call

³⁴ *Id.*

³⁵ *Id.* at 18018-19, ¶85. *See also Local Competition Second Report and Order* at 19537-38, ¶332 (holding that “charging different ‘code opening’ fees for different providers or categories of providers of telephone exchange service constitutes discriminatory access to telephone numbers and therefore violates section 251(b)(3)’s requirement of nondiscrimination.”).

³⁶ 47 U.S.C. § 251(b)(3).

³⁷ *Local Competition Second Report and Order* at 19392, 19399-40, ¶4.

³⁸ *Id.* at 19401, ¶9 (emphasis added).

notwithstanding the identity of the customer's or the called party's telecommunications service provider."³⁹

When an ILEC refuses to update the translation tables, certain switches and other elements in its network so that calls to 555 numbers assigned to competitive carriers are recognized and routed correctly, a customer of the competitive carrier can dial only seven or ten digits to call one of the competitive carrier's 555 numbers, but an ILEC customer must dial 18 digits to call the same number. Accordingly, the number of digits that an end user must dial differs based on the identity of the called party's local telephone service provider. Similarly, the number of digits that an end user must dial differs based on the identity of the calling party's local telephone service provider. Under these circumstances, the ILEC has failed to provide dialing parity, which violates the requirements of Section 251(b)(3) of the 1996 Act⁴⁰ and Section 51.207 of the Commission's rules.⁴¹ Premiere urges the Commission to reaffirm these findings with respect to 555 numbers.

B. Section 202(a) of the Act Prohibits ILECs from Charging Competitive Carriers an Exorbitant Fee to Obtain Access to their 555 Numbers.

Section 202(a) of the 1996 Act prohibits an ILEC from making "any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device"⁴² The Commission has held that charging different code opening fees for different providers or categories of providers of telephone exchange service "constitutes unjust

³⁹ 47 C.F.R. §51.207.

⁴⁰ 47 U.S.C. § 251(b)(3).

⁴¹ 47 C.F.R. §51.207.

⁴² 47 U.S.C. § 202(a).

and unreasonable discrimination in charges assessed for the opening of partial or full NXXs” in violation of Section 202(a) of the 1996 Act.⁴³ Similarly, the Commission has held that “where LECs provide CO code activation services, charging different CO code activation fees for different providers or categories of providers of telephone exchange service continues to constitute a violation of section 202(a).”⁴⁴ Premiere urges the Commission to reaffirm these findings with respect to 555 numbers.

C. Section 201(b) of the Act Prohibits ILECs from Charging Competitive Carriers an Exorbitant Fee to Obtain Access to their 555 Numbers.

Section 201(b) of the 1996 Act provides that “[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.”⁴⁵ The Commission has held that charging different code opening fees for different providers or categories of providers of any telecommunications service constitutes an “unjust practice” and “unjust charge” under Section 201(b).⁴⁶ Similarly, the Commission has held that “any fees charged for CO code activation also must be just and reasonable, as required by section 201(b) of the Act.”⁴⁷ Premiere urges the Commission to reaffirm these holdings with respect to 555 numbers.

⁴³ *10-Digit Dialing Order* at 18018-19, ¶85.

⁴⁴ *Id.* at 18018, ¶84. *See also Local Competition Second Report and Order* at 19538, ¶332 (holding that charging different code opening fees for different providers or categories of providers of any telecommunications service violates section 202(a)’s prohibition of unreasonable discrimination).

⁴⁵ 47 U.S.C. § 201(b).

⁴⁶ *Local Competition Second Report and Order* at 19538, ¶332.

⁴⁷ *10-Digit Dialing Order* at 18018, ¶84.

D. Section 251(e)(1) of the Act Requires ILECs to Treat Competitive Carrier as They Treat Themselves.

Section 251(e)(1) of the 1996 Act, in addition to granting the Commission jurisdiction over those portions of the NANP that pertain to the United States, requires the Commission to ensure that numbers are “available on an equitable basis.”⁴⁸ The Commission has held that the practice of charging different “code opening” fees “is inconsistent with the principle stated in Section 251(e)(1) . . . that numbers are to be available on an equitable basis.”⁴⁹ Therefore, in order to implement the requirements of Section 251(e)(1), the Commission requires incumbent LECs to “treat other carriers as the incumbent LECs would treat themselves.”⁵⁰

During informal mediation, SWBT claimed that Section 251(e)(1) was inapplicable and irrelevant because it, by its terms, applies to the Commission, not directly to SWBT. However, the Commission has made it abundantly clear that the Commission itself, in carrying out its statutory duty to ensure that numbers are made available on an equitable basis, has adopted requirements designed to ensure that numbers are available on an equitable basis.⁵¹ For example, the Commission requires ILECs, among other things, to treat other carriers as it would treat itself.⁵² When a carrier violates this requirement, its actions are inconsistent with Section 251(e)(1) and the Commission’s requirements thereunder. Therefore, an ILEC cannot ignore Section 251(e)(1) or the Commission’s requirements thereunder merely because Section

⁴⁸ See *Administration of the North American Numbering Plan Carrier Identification Codes (CICs)*, 12 FCC Rcd 8024, 8041 (1997), citing 47 U.S.C. § 251(e)(1).

⁴⁹ *Local Competition Second Report and Order* at 19392, 19538, ¶332.

⁵⁰ *Id.*

⁵¹ See, e.g., *Local Competition Second Report and Order* at 19538, ¶332.

⁵² See, e.g., *id.*

251(e)(1) on its face applies to the Commission. Premiere urges the Commission to reaffirm these holdings with respect to 555 numbers.

E. The INC 555 Guidelines Require the ILECs To Route Calls to 555 Numbers Assigned to Competitive Carriers.

The INC 555 Guidelines grant the right to use a particular 555 number to the entity to whom NANPA has assigned the 555 number, known as the 555 Number Holder.⁵³ Moreover, because “NANP resources are considered a public resource and are not owned by the assignees,” they “cannot be sold, brokered, bartered or leased by the assignee for a fee or other consideration.”⁵⁴ Section 52.15 of the Commission’s rules require all telecommunications carriers to comply with the INC Guidelines, including the INC 555 Guidelines.⁵⁵

An ILEC’s monopolization of the entire 555 code, and demand that competitive carriers pay an exorbitant fee to access the 555 numbers assigned to the competitive carrier by NANPA, violates that carrier’s right under the INC 555 Guidelines to use the 555 numbers for which it is the 555 Number Holder,⁵⁶ as well as Section 52.15 of the Commission’s rules.⁵⁷ These actions violate Section 2.10 of the INC 555 Guidelines, which grants the competitive carrier the sole right to control the 555 numbers for which it is the 555 Number Holder.⁵⁸

⁵³ INC 555 Guidelines, § 2.10 (“The assignee has the right to use an assigned number in accordance with these guidelines.”).

⁵⁴ INC 555 Guidelines, § 2.1 (“The NANP resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered or leased by the assignee for a fee or other consideration.”).

⁵⁵ See 47 C.F.R. §52.15(k)(1) (“All telecommunications service providers shall be subject to ‘for cause’ and random audits to verify carrier compliance with Commission regulations and applicable industry guidelines relating to numbering administration.”)

⁵⁶ INC 555 Guidelines, § 2.1 (“The NANP resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered or leased by the assignee for a fee or other consideration.”).

⁵⁷ 47 C.F.R. §§52.15(k)(1) & 52.15(k)(2).

⁵⁸ INC 555 Guidelines, § 2.10.

Moreover, by demanding that the competitive carrier pay an exorbitant fee for access to its 555 numbers, an ILEC in effect has offered to sell these 555 numbers to the competitive carrier, in violation of Section 2.1 of the INC 555 Guidelines, which prohibits the sale of numbers.⁵⁹

Premiere urges the Commission to clarify that the INC 555 Guidelines require the ILECs to route calls to 555 numbers assigned to competitive carriers.

⁵⁹ INC 555 Guidelines, § 2.1.

CONCLUSION

For the reasons discussed above, Premiere urges the Commission to act swiftly and forcefully to ensure that 555 numbers are made available promptly and on a nondiscriminatory basis.

Respectfully submitted,

PREMIERE NETWORK SERVICES, INC.

A handwritten signature in black ink, appearing to read "Todd D. Daubert", is written over a horizontal line.

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Counsel for
PREMIERE NETWORK SERVICES, INC.

DATED: April 1, 2002

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Provision of Directory Listing Information)	CC Docket No. 99-273
Under the Communications Act of 1934,)	
As Amended)	
)	
The Use of N11 Codes and Other Abbreviated)	CC Docket No. 92-105
Dialing Arrangements)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan)	

AFFIDAVIT OF LEO A. WROBEL

I, Leo A. Wrobel, of legal age, being duly sworn, do hereby depose and state:

1. My name is Leo A. Wrobel. I have personal knowledge of the facts stated herein, and they are true and correct.
2. My business address is 1510 N. Hampton Road, Suite 120, De Soto, TX 75115. I am currently employed as President of Premiere Network Services, Inc. ("Premiere"). In my current position as President, I am responsible for the overall corporate operations and policy decisions of Premiere.
3. Premiere is a competitive provider of local exchange, exchange access, interexchange and information services headquartered in De Soto, Texas.

4. I have reviewed Premiere's comments in the above-mentioned proceeding and the factual contents therein, and I certify to the best of my knowledge, information, and belief that the factual contents contained therein are true and correct.

This concludes my declaration.

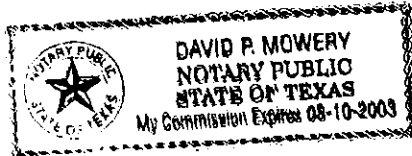


Leo A. Wrobel, President
Premiere Network Services, Inc.

STATE OF Texas)
COUNTY OF Dallas)

I, David P. Mowery a Notary Public in and for the jurisdiction aforesaid, whose commission expires on the 10th day of Aug / 2003 do hereby certify that whose name is signed to the writing above, has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this 1st day of Apr / 2002.



CERTIFICATE OF SERVICE

I, Michelle L. Arbaugh, hereby certify that on this 1st day of April, 2002, copies of the foregoing were delivered via hand-delivery (*) or U.S. Mail to:

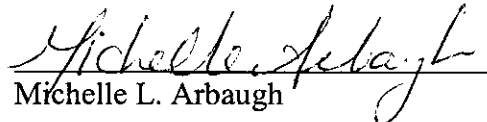
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